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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/692,467

10/23/2003

Christopher A. Pawlik

02-40184-WO
(829544.2002)

7256

7066

7590

08/16/2004

EXAMINER

HOGUE, GARY CHAPMAN

REED SMITH LLP
2500 ONE LIBERTY PLACE
1650 MARKET STREET
PHILADELPHIA, PA 19103

ART UNIT

PAPER NUMBER

3611

DATE MAILED: 08/16/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/692,467

Applicant(s)

PAWLIK ET AL.

Examiner

Gary C Hoge

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1, 2 and 4-20 is/are rejected.
- 7) ☒ Claim(s) 3 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claim 19 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. This claim depends from claim 27, which doesn't exist. It appears that the claim was intended to depend from claim 17.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1, 2, 4-13, 16, 17 and 20 are rejected under 35 U.S.C. 102(b) as being anticipated by Marino et al.

Marino discloses a unitary labeling apparatus for a container **12** having a cap **20** secured over an opening to an interior hollow, comprising a non-shrinkable base label **22**. The label is secured about a periphery of the container **12**, but not to a portion of the cap. However, the claim merely states that the label is *suitable* for being secured to a portion of the cap, not that is actually secured there. Marino further discloses a shrinkable overlayer **24** secured to the base label (see column 5, lines 3-7) and suitable for being shrunk about the periphery of the container and a periphery of the cap.

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Regarding claim 4, see column 2, line 30.

Regarding claims 5 and 6, see column 3, lines 24 and 25.

Regarding claim 7, see column 3, lines 36-40.

Regarding claim 8, see column 3, line 51.

Regarding claim 10, see column 5, line 22.

Regarding claims 9 and 11, see column 1, lines 48 and 60.

Regarding claims 12 and 13, see Fig. 1.

Regarding claim 16, release coat 32 constitutes a partially deadened pressure sensitive adhesive.

Regarding claim 20, see column 5, lines 12-14.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

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7. Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Marino et al. in view of Bernier et al.

Marino discloses the invention substantially as claimed, as set forth above. However, the base label does not include a perforation for facilitating at least partial destruction of the labeling apparatus. Bernier teaches that it was known in the art to provide a perforation in a labeling apparatus for facilitating at least partial destruction of the labeling apparatus. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the labeling apparatus disclosed by Marino with a perforation, as taught by Bernier, in order to facilitate at least partial destruction of the labeling apparatus.

8. Claims, 15, 18 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Marino et al.

Regarding claims 15 and 18, Marino discloses the invention substantially as claimed, as set forth above, including a UV curable varnish. However, the varnish is applied to the top of the base label, in order to seal the printing, rather than to a portion of the overlayer. However, because Marino also discloses the option of including printing on the overlayer, it would have been obvious to one having ordinary skill in the art at the time the invention was made to put a coating of varnish on the overlayer, too, in order to seal the printing thereon.

Regarding claim 19, it is not known how the label and overlayer disclosed by Marino are cut. However, die-cutting is a well-known process for cutting a label. It would have been obvious to one having ordinary skill in the art at the time the invention was made to cut the label and the overlayer by die-cutting, as an obvious matter of choice in design.

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Allowable Subject Matter

9. Claim 3 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

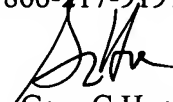
Conclusion

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gary C Hoge whose telephone number is (703) 308-3422. The examiner can normally be reached on 5-4-9.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lesley Morris can be reached on (703) 308-0629. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Gary C Hoge
Primary Examiner
Art Unit 3611

gch